Ethics and Mediation

How the mediation process has been effective in resolving ethical issues

DAWN HOBDY, LICSW
Learning Objectives

- To review the purpose of mediation
- To provide an overview of the mediation process
- To list the strategies/skills of a mediator
- To provide information on how mediation is useful in resolving ethical issues
- To outline the challenges of mediation
What is mediation?

Mediation is a collaborative problem-solving process in which a neutral third party guides a discussion intended to help the parties in the dispute define the issues, obtain relevant information, and generate reasonable options for resolution.
Why mediation works?

- Definition (also not arbitration, representation, or therapy)
- Informal
- Voluntary
- Collaborative
- Controlled
- Impartial – Neutral
- Self - determination
- Confidential
- Informed
- Safe
Mediator Requirements

• No state regulations

• Certification (learn a "universal skill-set" for facilitative mediation usually through a 40 hour course)

• Competencies may be applied in workplaces and in other settings, such as judicial (court-based), divorce, commercial, environmental, and community mediation

• Some states require specific qualifications for performing mediation in court-based environments.
The Mediation Session

Step 1: Introduction

The mediator’s first job is to make the parties feel at ease and explain the ground rules.

- The mediator does not make decisions
- The mediator helps the parties reach agreement
- The mediator will not take sides
The Mediation Session

Step 2: Telling the Story

Each party tells what happened. One person tells his or her side of the story first. The other party then explains his or her version of the facts.

• No interruptions are allowed

• All parties may take notes
The Mediation Session

Step 3: Identifying Facts, Issues, and Interests

The mediator next attempts to identify any agreed-upon facts and issues that are important to each person. The mediator:

• listens to each side
• summarizes each party’s view
• checks to make sure each party understands the other’s view
The Mediation Session

Step 4: Identifying Alternative Solutions

During this step, the participants (with help from the mediator) think of all possible solutions to their problem. Because the opposing sides to the dispute probably arrived at the mediation session with a desired outcome in mind, it is often difficult for them to consider other solutions.

- The mediator makes a list of solutions
- Each party explains his or her feelings about each solution listed
The Mediation Session

Step 5: Revising and Discussing Solutions

On the basis of feelings expressed by each party, the mediator revises the list of possible solutions and tries to identify a solution that both parties may be able to agree on.
The Mediation Session

Step 6: Reaching an Agreement

The mediator helps the parties to reach an agreement by choosing a solution that has been discussed and that both parties agree on. The written agreement should be as specific as possible.

- The agreement should also explain what will happen if either disputant breaks the agreement
- Once it is finalized, the agreement, which takes the form of a contract, is signed by both parties
Mediation in the NASW Professional Review Process (PRP)

- Incorporated into the PRP in 2001
- Alternative to adjudication
Mediation is a conflict resolution process that is valued both as an element of social work practice and as a way to resolve grievances related to violations of ethics. Because mediation is a conflict resolution process in which the parties themselves decide on the outcome, NASW does not determine whether specific violations of the Code of Ethics have or have not occurred.
The NASW Representative

The NASW Code of Ethics states that there are specific “ethical standards relevant to the professional activities of all social workers.” These standards concern social workers’ ethical responsibilities to clients, to colleagues, in practice settings, to other professionals, to the social work profession, and to the broader society. As a consequence, NASW has a vested interest in the outcome of professional review as the case relates to these areas. Therefore, once the RPR has been accepted for mediation, a member of NASW will be appointed to attend mediation as the NASW Representative. This Representative must be an NASW member with professional review experience.
Referrals to Adjudication

- 1.09 Sexual Relationships
- 1.10 Physical Contact
- 1.11 Sexual Harassment
- 2.07 Sexual Relationships
- 2.08 Sexual Harassment
Referrals to Mediation

- 1.03 Informed Consent
- 1.04 Competence
- 1.05 Cultural Competence and Social Diversity
- 1.08 Access to Records
- 1.12 Derogatory Language
- 1.13 Payment for Services
- 1.14 Clients Who Lack Decision-Making Capacity
- 1.15 Interruption of Services
- 1.16 Termination of Services
- 2.01 Respect
Possible Outcomes

- Letter of apology
- Continued education
- Corrections made to records, policies, evaluations, etc.
- Financial adjustments
- Supervision/consultation around the issues addressed
NASW Professional Review Statistics

- Approximately 125 cases accepted for review
- 95% of those accepted were reviewed via mediation
- 98% of those mediated have been successful
Challenges

• Parties can’t select mediation or adjudication
• No determination as to whether or not there was a violation
• An unsuccessful mediation may result in the closing of a case or a referral to adjudication
Q & A

Dawn Hobdy, LICSW
Manager, Office of Ethics and Professional Review
National Association of Social Workers
dhobdy@naswdc.org